IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 20014 of 2002

Between:

Dileef School of Nursing, Nellore rep. By the Secretary-cum-Treasurer, E.Prabhudas son of George

..... PETITIONER

AND

1 State of A.P rep. By the Principal Secretary,
Medical Health & Family welfare
Secretariat Buildings, Hyderabad
2 Director of Medical Education
Sultan Bazar, Koti, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue Writ of Mandamus or any other appropriate Writ, Order, or Direction declaring the action of the Government in rejecting the proposal for increasing the strength of the petitioner Nursing School from 45 to 60 student as illegal, arbitrary and contrary to the spirit of G.O. in force and for a consequential direction, directing the respondent to permit the petitioner to have 60 students as the strength for his Nursing School .

Counsel for the Petitioner: MR.M.LAKSHMANA SARMA

Counsel for the Respondents.: GP FOR MEDICAL HEALTH & FAMILY WELFARE

The Court made the following ORDER:

Heard learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents.

Though, this matter was heard on more than one occasion, no counter-affidavit has been filed on behalf of the respondents.

In this writ petition, the petitioner, which is a School of Nursing, seeks to issue a writ of mandamus declaring the action of the respondents in rejecting the proposal submitted by it for increase of strength from 45 to 60 students, as illegal, arbitrary.

The case of the petitioner is that the institution was started after obtaining necessary permission from the State Government and also from the A.P. Nursing Council, in the year 1988. At that time, the state Government did not prescribe any strength while granting permission. However, at the instance of the several other similarly placed institutions, which have the capacity of
60 students, and in view of the requests made from different similar institutions, official recommendation was made by the Government in G.O.Ms.No.313 Medical Health and Family Welfare dated 16.08.1997 whereunder a policy decision has been taken restricting the maximum strength in schools should not exceed 60. If the infrastructure and the teaching facilities in the Nursing schools are not sufficient for 60 students it can be reduced at the discretion of the Government. Thereafter, under G.O.Ms.No.261, Health, Medical & Family Welfare dated 14.07.1997, a committee was constituted whereunder, several submissions submitted by others were considered and it was decided by the committee that the annual intake per year is limited to 60 students. Subsequently, the respondents rejected the petitioner's proposal for increase of the capacity from 45 students to 60 students only on the ground that under the policy decision, the intake is restricted to a maximum of 45 students. Hence, the present writ petition.

The learned Government Pleader appearing on behalf of the respondents stated that according to the policy decision, it is not open for the petitioner to lay a claim for any

increase. Hence, it has no such right and prayed for dismissal of the writ petition.

The impugned order in this writ petition reads as follows:

> "The attention of the Director of Medical Education, Andhra Pradesh, Hyderabad is invited to the reference cited and she is informed that the Chairman, Selection Committee for Para Medical Institutions, Hyderabad has taken a decision that the intake should be restricted to a maximum of 40 students only in all the cases. Therefore, the proposal for increase of seats from 45-60 to Correspondent, Dileef School of Nursing, Nellore, is rejected"

Considering the submissions made supra and also on a reading of the impugned order it is evident that the impugned order was passed without giving any notice and opportunity to the petitioner. Further, the order also does not disclose the reasons as to why the petitioner-institution is not entitled to such an increase of the students. It referred only to the policy decision. However, any restriction in regard to the strength of the students would necessarily depend on the infrastructure of the institution and also on the facts and circumstances of each case.

Having regard to the same and especially having regard to the policy decision of the Government was itself made in G.O.Ms.No.313 Medical Health and Family Welfare dated 16.08.1997 prescribing the maximum capacity of students at 60, it is not open for the respondents to lay blanket policy restricting the strength at 40. Be that as it may, the impugned order is passed without giving any notice and opportunity to the petitioner and also without specific reasons eliciting for rejection.

In the circumstances, the writ petition is allowed by setting aside the impugned order. The respondents are directed to reconsider the petitioner case on proper perspective after giving notice and opportunity to the petitioner and pass orders on merits in accordance with law.

26.07.2004

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Monday, the twenty six day of July, Two Thousand and Four.

To
1 Principal Secretary, State of A.P
Medical Health & Family welfare
Secretariat Buildings, Hyderabad
2 Director of Medical Education
Sultan Bazar, Koti, Hyderabad

3 Two CD Copies